

CRAVATH, SWAINE & MOORE

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INTERNATIONAL TELEX: 820978

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RECORDATION NO. 5806-C Filed & Recorded

FEB 24 1977 8 15 AM

INTERSTATE COMMERCE COMMISSION

7-0554010

FEB 24 1977

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FEE OPERATION BR.

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THOMAS R. BROME
ROBERT D. JOFFE
ROBERT F. MULLEN

RECORDATION NO. 5806-F Filed & Recorded

FEB 24 1977 8 15 AM

INTERSTATE COMMERCE COMMISSION
Dear Sir:

RECORDATION NO. 5806-D Filed & Recorded

FEB 24 1977 8 15 AM

INTERSTATE COMMERCE COMMISSION

February 23, 1977

RECORDATION NO. 5806-E Filed & Recorded

FEB 24 1977 8 15 AM

INTERSTATE COMMERCE COMMISSION

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's Rules and Regulations thereunder, as amended, enclosed herewith for filing and recordation are counterparts of the following documents:

(1) Assignment Agreement dated as of January 1, 1971, between Allis-Chalmers Leasing Corporation, as First Lessor, and Allis-Chalmers Credit Corporation, as Second Lessor.

(2) Assignment Agreement dated as of February 1, 1977, between Allis-Chalmers Credit Corporation, as Second Lessor, and Indianapolis Morris Plan Corporation, as Third Lessor.

(3) Chattel Mortgage dated as of February 1, 1977, from Indianapolis Morris Plan Corporation, as Mortgagor, to National Bank of North America, as Mortgagee.

(4) Collateral Assignment of Lease and Agreement dated as of February 1, 1977, between Indianapolis Morris Plan Corporation, as Assignor, and National Bank of North America, as Assignee, attached to which is a Lessee's Consent and Agreement by The Western Pacific Railroad Company, as Lessee.

The names and addresses of the parties to the aforementioned agreements are as follows:

Carlyle E. Maw

(1) First Lessor:

Allis-Chalmers Leasing Corporation
Box 512
Milwaukee, Wisconsin 53201

(2) Second Lessor:

Allis-Chalmers Credit Corporation
Box 512
Milwaukee, Wisconsin 53201

(3) Third Lessor-Mortgagor:

Indianapolis Morris Plan Corporation
110 East Washington Street
Indianapolis, Indiana 46204

(4) Mortgagee-Assignee:

National Bank of North America
44 Wall Street
New York, N. Y. 10005

(5) Lessee:

The Western Pacific Railroad Company
526 Mission Street
San Francisco, California 94105

The above-mentioned documents relate to a Lease of Railroad Equipment dated as of August 1, 1970, with the Lessee and originally with Allis-Chalmers Leasing Corporation, as Lessor, filed and recorded with the Interstate Commerce Commission on August 20, 1970, at 2:50 p.m., Recordation No. 5806, as amended by a First Supplement dated as of August 15, 1970, filed and recorded with the Interstate Commerce Commission on October 12, 1970, at 9:45 a.m., Recordation No. 5806-A, and as amended by an Agreement of Amendment dated as of November 1, 1970, filed and recorded with the Interstate Commerce Commission on November 30, 1970, at 1:40 p.m., Recordation No. 5806-B.

Please file and record the documents submitted with this letter, cross indexing said documents under the names of

Allis-Chalmers Leasing Corporation, Allis-Chalmers Credit Corporation, Indianapolis Morris Plan Corporation, The Western Pacific Railroad Company and National Bank of North America, and assign said documents the recordation numbers set forth below:

Document (1)--Recordation No. 5806-C
Document (2)--Recordation No. 5806-D
Document (3)--Recordation No. 5806-E
Document (4)--Recordation No. 5806-F

The equipment covered by the aforementioned documents consists of the following:

Forty-seven (47) 2,220 cubic feet 100-ton open top hopper cars, bearing road numbers WP 10001-10047, both inclusive;

Ten (10) 3,000 H.P. Model GP-40 diesel electric locomotives, bearing road numbers WP 3517-3526, both inclusive;

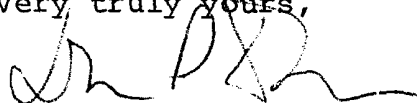
Fifteen (15) 65'6" 100-ton drop end gondola cars, bearing road numbers WP 9051-9065, both inclusive;

One hundred (100) 50'6" 70-ton insulated box cars, bearing road numbers WP 68226-68325, both inclusive.

There is also enclosed a check payable to the Interstate Commerce Commission for the required recordation fee.

Please stamp all counterparts of each of the enclosed documents and the three attached copies of this transmittal letter with your official recording stamp. You will wish to retain two copies of each of the documents and the original of this transmittal letter for your files. It is requested that the remaining counterparts of each document and the three copies of this transmittal letter be returned to the bearer of this letter.

Very truly yours,



John P. Dinn

Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.
A
BY HAND

COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT dated as of February 1, 1977, between INDIANAPOLIS MORRIS PLAN CORPORATION (hereinafter called the Company) and NATIONAL BANK OF NORTH AMERICA, a national banking association (hereinafter called the Secured Party), as mortgagee under a Chattel Mortgage dated as of the date hereof (hereinafter called the Security Agreement), between the Company and the Secured Party, and as purchaser of certain Notes of the Company pursuant to the Purchase Agreement dated as of the date hereof (hereinafter called the Purchase Agreement), between the Secured Party and the Company.

WHEREAS, the Company, as Lessor, and The Western Pacific Railroad Company, as Lessee (hereinafter called the Lessee), are parties to a Lease of Railroad Equipment dated as of August 1, 1970, originally with Allis-Chalmers Leasing Corporation, a Wisconsin corporation, as Lessor, filed and recorded with the Interstate Commerce Commission on August 20, 1970, Recordation No. 5806, as amended by a First Supplement dated as of August 15, 1970, filed and recorded with the Interstate Commerce Commission on October 12, 1970, Recordation No. 5806-A, and as amended by an Agreement of Amendment

Company pursuant to the Purchase Agreement, the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Secured Party (the obligations of the Company arising under the Notes, the Purchase Agreement, the Security Agreement and this Assignment are hereinafter collectively called the Liabilities);

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. As security for the payment and performance of the Liabilities, the Company hereby assigns, transfers, and sets over unto the Secured Party all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, con-

sents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease.

The Company agrees to cause all the Payments to be made when due directly to the Secured Party, before 11:00 a.m., New York City time, by Federal funds bank wire transfer to National Bank of North America, Attention of Mr. William Umbs, Leasing Department, or in such other manner as may be designated in writing by the Secured Party. The Secured Party will accept all Payments and all payments pursuant to this Assignment and will apply the same as follows: first, to or toward the payment of all amounts then due and payable arising out of the Liabilities and the Secured Party shall credit such Payments and such payments pursuant to this Assignment so applied to the amounts then due and payable by the Company arising out of the Liabilities; and second, so long as no default shall have occurred and then be continuing under the Purchase Agreement, the Notes or the Lease, any balance of such Payments and such payments pursuant to this Assignment remaining shall be paid over to the Company by the Secured Party. So long as any such default shall then be continuing, the Secured Party shall not pay over any of the Payments or such payments pursuant to this Assignment, but,

during such continuance, shall apply all Payments and all such payments pursuant to this Assignment in a manner consistent with the provisions of the Purchase Agreement, the Security Agreement and the Notes. Anything in this Assignment to the contrary notwithstanding, no amounts shall be considered to be due and payable by the Company arising out of the Liabilities in the event that such amounts shall have been paid to the Secured Party by the Lessee pursuant to the Lease or the Lessee's Consent and Agreement annexed hereto.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Secured Party to, or transfer, or pass, or in any way affect or modify any liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Secured Party.

3. To protect the security afforded by this Assignment the Company agrees as follows:

(a) Faithfully to abide by, perform and discharge each and every obligation, covenant and agreement of the

Lease by the Company to be performed; at the sole cost and expense of the Company (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Security Agreement), at the direction of the Secured Party, to enforce or secure the performance of each and every obligation, covenant, condition and agreement contained in the Lease by the Lessee to be performed; without the written consent of the Secured Party not to anticipate the rents under the Lease or to waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein; to hold any Payments received by the Company which are assigned and set over to the Secured Party by this Assignment in trust for the Secured Party and to turn them over to the Secured Party forthwith in the same form in which they are received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Security

Agreement), to (i) appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the Company and the Lessee thereunder and (ii) pay all costs and expenses of the Secured Party, including attorneys' fees in a reasonable sum, in any action or proceeding pertaining thereto in which the Secured Party may appear.

(c) That should the Company fail to make any payment or to do any act herein provided, then the Secured Party, but without obligation so to do and without notice to or demand on the Company and without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Secured Party may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Secured Party, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

(d) To pay immediately upon demand, all sums expended by the Secured Party under the authority hereof, together with interest thereon at the rate of 8-3/4% per annum.

4. The Company does hereby constitute the Secured Party the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Secured Party may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of the Liabilities, the assignment made hereby and all rights herein assigned to the Secured Party shall terminate, and all estate, right, title and interest of the Secured Party in and to the Lease and the Payments shall revert to the Company.

6. The Company represents and warrants that
(a) the execution and delivery by the Company of the Assignment Agreements, this Assignment, the Security Agreement and

the Notes have each been duly authorized, and the Lease, this Assignment, the Security Agreement and the Notes are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not made any other assignment of the Lease and the Secured Party's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Security Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease on or prior to the date hereof and (e) the Lease is in full force and effect and has not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Lease) or any event which with notice and/or lapse of time would constitute such an Event of Default.

If an Event of Default (as defined in the Lease) shall occur and be continuing, the Secured Party shall be entitled (i) to exercise all the rights, privileges and remedies available to the Company under the Lease and to the Secured Party under the Security Agreement, including any

right, privilege or remedy to take possession of the Units, if any, and (ii) to do any acts which the Secured Party deems proper to protect the security hereof, either with or without taking possession of the Units; subject in any event to the rights of the Lessee as contained in § 11 of the Lease. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Notes, the Lease, the Purchase Agreement or the Security Agreement, or invalidate any act done hereunder.

7. The Company covenants and agrees with the Secured Party that in any suit, proceeding or action brought by the Secured Party under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Secured Party harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforce-

able against the Secured Party or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of the successive assignments or transfers.

8. The Company will from time to time execute all such financing statements and supplemental instruments and documents as the Secured Party may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

9. The Secured Party may assign to any successor secured party pursuant to the Security Agreement all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Secured Party hereunder.

10. The Company agrees that it will not, without the prior written consent of the Secured Party, enter into any agreement amending, modifying or terminating the Lease and that any amendment, modification or termination thereof without such consent shall be void.

11. This Assignment shall be governed by the laws of the State of Indiana; provided, however, that the

parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the markings on the Units as shall be conferred by the laws of the several jurisdictions in which this Assignment or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

12. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Secured Party at such address as the Secured Party shall designate.

13. The Company, at the Lessee's expense, will promptly cause this Assignment and any consent and agreement hereto by the Lessee to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

14. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision

hereof prohibited or unenforceable in any respect.

15. All rights and remedies of the Secured Party hereunder are cumulative, and no delay on the part of the Secured Party in the exercise of any such right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Secured Party of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy provided by or for the benefit of a secured creditor.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by an officer thereunto duly authorized, as of the date first above written.

INDIANAPOLIS MORRIS PLAN CORPORATION,

by _____
Vice President

[Corporate Seal]

Attest:

Secretary

Accepted:

NATIONAL BANK OF NORTH AMERICA,

by _____
Vice President

[Corporate Seal]

Attest:

Secretary

STATE OF ,)
) SS.:
COUNTY OF ,)

On this day of February, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of Indianapolis Morris Plan Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[Notarial Seal]

Notary Public

My Commission Expires:

STATE OF NEW YORK,)
) SS.:
COUNTY OF NEW YORK,)

On this day of February, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of National Bank of North America, that one of the seals affixed to the foregoing instrument is the corporate seal of said Association and that said instrument was signed and sealed on behalf of said Association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Association.

[Notarial Seal]

Notary Public

My Commission Expires:

LESSEE'S CONSENT AND AGREEMENT

The undersigned, THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (hereinafter called the Lessee), the Lessee named in the Lease of Railroad Equipment dated as of August 1, 1970, originally between ALLIS-CHALMERS LEASING CORPORATION and the Lessee, as amended by a First Supplement dated as of August 15, 1970, and as amended by an Agreement of Amendment dated as of November 1, 1970, as assigned by ALLIS-CHALMERS LEASING CORPORATION to ALLIS-CHALMERS CREDIT CORPORATION (hereinafter called the Assignor), pursuant to an Assignment Agreement dated as of January 1, 1971, and as assigned by the Assignor to INDIANAPOLIS MORRIS PLAN CORPORATION (hereinafter called the Lessor), pursuant to an Assignment Agreement dated as of February 1, 1977 (as so amended, hereinafter called the Lease), and referred to in the foregoing Collateral Assignment of Lease and Agreement dated as of the date hereof, hereby (a) acknowledges receipt of a copy of said Collateral Assignment of Lease and Agreement (hereinafter called the Assignment) and (b) consents to all the terms and conditions of said Assignment.

As an inducement to the Secured Party referred to in the Assignment, to loan funds pursuant to the Purchase Agreement referred to in the Assignment, the Lessor has executed and delivered the Security Agreement referred to in the Assignment, pursuant to which the Lessor is granting

a security interest in the units of railroad equipment (hereinafter called the Units), leased by the Lessor to the Lessee pursuant to the Lease. In accordance with its agreements contained in § 11 of the Lease and in consideration of other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the Lessee agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to the assignee named in the Assignment (hereinafter called the Assignee), as provided in the Assignment, or as otherwise directed by the Assignee; it being hereby agreed that the obligation of the Lessee to pay all the aforesaid Payments is absolute and unconditional;

(2) the Assignee shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Assignee were named therein as the Lessor;

(3) the Payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the Lessee might have against the Lessor or

otherwise, and the payment thereof to the Assignee shall be final and shall not be subject to, and the Lessee hereby agrees to indemnify the Assignee against any penalty charge or expense arising out of any liens, charges, security interests or claims of any nature whatsoever resulting from a breach by the Lessee of its obligations under the Lease, prior to or pari passu with the right of the Assignee to apply such payments as provided in the Assignment;

(4) the Assignee shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(5) the Lease shall not, without the prior written consent of the Assignee, be terminated or modified, or any action be taken or omitted by the Lessee, the taking or omission of which might result in an alteration or impairment of the Lease or the Assignment or this Consent and Agreement or of any of the rights created by any thereof.

Anything to the contrary notwithstanding in this Consent and Agreement or the Assignment, the Lessee assumes no obligations or liability with respect to any security of the Lessor or any other person, it being understood that the Lessee's obligations hereunder are solely to perform the

obligations contained in the Lease, as directed by the Lessor herein and in the Assignment.

This Consent and Agreement, when accepted by the Assignee by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of California, and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of: *February 1, 1977*

THE WESTERN PACIFIC RAILROAD
COMPANY,

[Corporate Seal]

by

[Signature]
Vice President

Attest:

[Signature]
Secretary

The foregoing Consent
and Agreement is hereby accepted,
as of the day of .

[Corporate Seal]

NATIONAL BANK OF NORTH AMERICA,

by

Vice President

Attest:

Secretary

STATE OF CALIFORNIA,)
) ss.:
CITY AND COUNTY OF SAN FRANCISCO,)

On this 18th day of February, 1977, before me personally appeared R. W. STUMBO, JR., to me personally known, who, being by me duly sworn, says that he is a Vice President of THE WESTERN PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.



[Notarial Seal]

Diane Lorette Lafontis
Notary Public

My Commission Expires: Dec. 14, 1979

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this _____ day of February, 1977, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is a Vice President of NATIONAL BANK OF NORTH AMERICA, that one of the seals affixed to the foregoing instrument is the corporate seal of said Association, that said instrument was signed and sealed on behalf of said Association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Association.

[Notarial Seal]

Notary Public

My Commission Expires: